Supreme Court, U.S.
FILED
SEP 24 1999
OFFICE OF THE CLERK

No. 99-42

In The

Supreme Court of the United States

CENTRAL NEWSPAPERS, INC.,

Petitioner,

vs.

MICHAEL J. JOHNSON and McKINLEY KELLER,

Respondents.

On Petition For A Writ Of Certiorari To The Third Circuit Court Of Appeal Of The State Of Louisiana

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL J. JOHNSON
Counsel of Record for Respondents
7169 Hwy. 115
Bunkie, Louisiana 71322
(318) 346-6484

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I.

Whether this Honorable Court should grant a Petition For Writ of Certiorari prior to exhaustion of State remedies and prior to adjudication in any inferior Federal tribunals.

II.

Whether Louisiana's Electronic Surveillance Law, La. R.S. 15:1301, et seq. violates any provisions of the United States Constitution.

PARTIES TO THE PROCEEDINGS

Michael J. Johnson and McKinley Keller are plaintiffs in the State Court proceedings entitled: Civil Suit No. 96-3590-B; Michael J. Johnson vs. Carol Aymond, Jr., et al. and Civil Suit No. 96-3663-B; McKinley Keller vs. Carol Aymond, Jr. et al. Both parties appear as respondents in these Certiorari proceedings;

Central Newspapers, Inc. is a defendant in the two above encaptioned proceedings and is the petitioner in these Certiorari proceedings;

Avoyelles Publishing Company, its editor and/or publisher, Randy Decuir, and John Doe, aka "Alphonse A. Alphonse" a nameless editorializer for the Avoyelles Publishing Company, are defendants in the two above encaptioned proceedings;

Carol Aymond, Jr. is a defendant in the above encaptioned proceedings and is the person who illegally disseminated taped telephone conversations of plaintiffs, Michael J. Johnson and McKinley Keller.

TABLE OF CONTENTS

Page

Questions Presented For Review i

Parties To The Proceedings ii

Table Of Contents iii

Table Of Authorities iv

STATEMENT OF THE CASE 1

A. Factual Background 1

B. Legal Background 3

Issues Presented (No. 1) 4

(Should this Honorable Court grant this Petition For Writ of Certiorari prior to exhaustion of state remedies and/or prior to adjudication of any Constitutional questions in any inferior Federal Court?)

Argument on Issue No. 1 4

Issues Presented (No. 2) 2

(Is Louisiana's Electronic Surveillance Law, La. R.S. 15:1301, et seq., unconstitutional?)

Argument on Issue No. 2 2

Conclusion 7

APPENDIX

Appendix A – Decision of Third Circuit Court of Appeal dated December 23, 1998 .....App. 1

Louisiana's Electronic Surveillance Law (La. R.S. 15:1301 *et seq.* .....App. 29

TABLE OF AUTHORITIES

Page

CASES CITED:

Castille vs. Peoples, 109 S.Ct. 106 (1989) 4

Johnson vs. Aymond, et al., 722 So.2d 1224 (La. 1998) 6

Keller vs. Aymond, et al., 722 So.2d 1224 (La. 1998) 6

O'Sullivan vs. Boerckel, 119 S.Ct. 1728 (1999) 4

STATUTES CITED:

Louisiana Electronic Surveillance Act; La. R.S. 15:1301, et seq. 5

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

During the year 1996, respondent, Michael J. Johnson, was seeking re-election to the post of Louisiana State District Judge, a position he was first elected to in 1990. His opponent in the October election was defendant, Carol Aymond, Jr. On November 6, 1996, defendant, Aymond, convened a press conference in his office in Bunkie, Louisiana and invited members of the press as well as several citizens. He proceeded to play tape recordings of telephone conversations held between Michael J. Johnson and McKinley Keller while in the privacy of their homes. Neither person gave consent to anyone to tape said conversations. After the playing of the tapes, Aymond passed out what purported to be transcripts of the tapes. A casual look at these "transcripts" reveals revisions and editing by Aymond, or someone acting on his behalf, to say what he obviously wanted them to say. The defendant, Avoyelles Publishing Company, and/or its editor and/or reporter had a feeling these tapes were illegal before ever attending the news conference and later admitted as much to Johnson. After the November 6, 1996 news conference, both defendant newspapers ran headline news stories revealing not only that there had been a news conference and that allegations had been made, but also, revealing the **contents** of these illegally taped conversations. The defendant newspapers made no effort at all to see if the transcripts matched the tapes nor did they attempt to fashion any news stories not using said contents.

One week later, on November 13, 1996, Aymond conducted another news conference and, again, played illegal tapes and distributed altered transcripts. At this news conference, Aymond played tapes and distributed edited transcripts of conversations between Keller and District Attorney Eddie Knoll and Louisiana State Representative Charlie Dewitt. These tapes did not involve Johnson at all. In the intervening week, both defendant newspapers had sought out the opinion of the District Attorneys' Office in their respective parishes (counties). The District Attorneys of both Parishes were united in their opinion that these tapes and Aymond's activities were illegal. Defendant, Avoyelles Publishing Company heeded this advice and only printed a news story about the news conference and the allegations made, but did not use the contents of the taped conversations. Defendants, Central Newspapers Inc., threw care to the wind and again printed the contents of these taped conversations knowing full well that Aymond's activities were illegal. None of the defendants have ever contended that Aymond's activities were legal or that they even thought they were. Suit was filed against all defendants. No charges were ever filed against Johnson and Keller by any authority, no indictment ever returned against either person, no criminal trial ever conducted and no conviction ever had from any information revealed by these illegally intercepted and recorded telephone conversations. There were no disciplinary proceedings instituted against Johnson because of the contents of these tapes or the allegations made by Aymond. Although Johnson was removed from his position as District Judge, said removal was not based on any alleged misconduct relating to these taped

conversations but instead, arose out of Johnson's owning pay telephones in Avoyelles Parish Jails while serving as District Judge. Petitioner's allusion to Johnson's removal on page 3 of the Petition For Writ of Certiorari is misleading and is an attempt to equate these tapes with "public interest" and "judicial misconduct."

B. LEGAL BACKGROUND

After suit was filed against all defendants, defendant, Aymond, asserted his 5th Amendment Right against self-incrimination and, at the request of Johnson and Keller, all proceedings as to him were stayed. Defendants, Central Newspapers, Inc., filed an Exception of No Cause of Action, which was sustained by the Trial Judge. Plaintiff's, Johnson and Keller, applied for Supervisory Writs to the Honorable Third Circuit Court of Appeal and the Trial Judge's decision was reversed. Likewise, defendants, Avoyelles Publishing Company, Randy Decuir and John Doe, aka "Alphonse A. Alphonse", filed a Motion For Summary Judgment, which the Trial Judge sustained. Again, plaintiffs applied for supervisory writs to the Honorable Third Circuit Court of Appeal and again the Trial Judge was reversed. This time, defendants, Avoyelles Publishing, Decuir, John Doe and Central Newspapers, Inc., sought supervisory writs in the Louisiana Supreme Court. Their applications were denied. This Petition For Writ Of Certiorari then ensued.

ISSUES PRESENTED

1) **Should this Honorable Court grant this Petition For Writ of Certiorari prior to the exhaustion of state remedies and prior to adjudication in any inferior Federal tribunals?**

ARGUMENT

It has long been the established jurisprudence of this Honorable Court, and its subordinate inferior Courts throughout the Land, that the Federal Courts will not interfere in the administration of justice, with rare exceptions such as claims raising Civil Rights violations, throughout the various states unless and until all remedies in state courts have been exhausted. *O'Sullivan vs. Boerckel*, 119 S.Ct. 1728 (1999); *Castille vs. Peoples*, 109 S.Ct. 106 (1989). Petitioners in this matter seek to rush their cause from infancy to old age in one giant legal step.

Thus far, the Third Circuit Court of Appeal for the State of Louisiana, the tribunal which is the first in the hierarchy of appeals over state district courts in the geographical area in which the parties are situated, has, on two occasions, ruled in favor of Johnson and Keller's privacy rights. The Third Circuit, in its December 23, 1998 opinion, carefully and meticulously examined the issues of *Freedom of the Press vs. Rights To Privacy*, coming down squarely on the side of Johnson and Keller. The Louisiana Supreme Court, on application by the defendant newspapers, refused to hear the matter by a 4-3 vote. As much as plaintiffs would like to believe that the majority of that Court felt Johnson and Keller's rights to privacy outweighed the newspapers right to sell papers at any cost

to citizens, we, in fact, have not, at this point received a clear ruling from this State's highest Court on the Constitutionality of Louisiana's Electronic Surveillance Law. We only know that the Louisiana Supreme Court decided not to exercise its discretionary right to hear the writ application ***at the time it was presented***. This, in no manner, details what our State Supreme Court will decide when the issue is squarely before it upon appeal after trial on the merits.

Likewise, although defendant newspapers have done a great deal of posturing in their own publications about seeking relief in federal court, none of the defendants have filed any proceedings in the local Federal District Courts to declare Louisiana's statutes unconstitutional.

It is respectfully submitted that, until this matter has been allowed to proceed to trial, and all facts developed, and until such time as Louisiana's Supreme Court and/or a Federal District Court, has issued a ruling on the constitutionality of Louisiana's Electronic Surveillance Act, this Honorable Court should refuse to entertain this Petition For Writ Of Certiorari.

2) Is Louisiana's Electronic Surveillance Law, La. R.S. 15:1301, et seq. Unconstitutional?

The defendant newspapers try to couch the legal question to this Honorable Court in innocent terms of whether the First Amendment protects newspapers when they accurately report information of "public concern" from a source who has illegally acquired this information. The "public concern" they contend, is judicial misconduct. The defendants misconstrue the question.

The question presented is whether the individual states of this nation can, without doing harm to the U.S. Constitution, draw a narrow law that restricts the use of the **contents** of illegally obtained information in order to protect the privacy rights of the citizens of their state. No one, and no law, is trying to muzzle a free press in the reporting of valid news stories. The newspapers could well have reported the existence of the news conferences, the existence of tapes and the allegations made by Aymond. They were, however, not content to do so, opting for the more sensational reporting of the contents of illegally obtained tapes which had been edited by a spiteful and embittered loser of a political race. The justification that judicial corruption is of grave public concern, thereby necessitating exposure by America's press, will not bear close scrutiny either.

Johnson, a District Judge, was never disciplined as a result of these illegal tapes. No authority, either state or federal, ever instituted criminal, civil or administrative proceedings against him because there was nothing to institute proceedings for. Moreover, the second tape did not involve Johnson, and, therefore, could not involve any contention of judicial misconduct. The defendant newspapers gloss over this fact just as they attempt to relate Johnson's removal from office to the tapes, a fact not even remotely related to reality.

The undersigned could not begin to cite more authorities more persuasively on these issues than did the Honorable Third Circuit Court of Appeal of the State of Louisiana in its December 23, 1998 ruling involving these matters. (Cited at 722 So.2d 1224 (La. 1998)). Respondents, Johnson and Keller cite said opinion, and all

authorities cited therein, as authority for their position before this Honorable Court.

Quoting from a pertinent portion of the above mentioned ruling, the reason the newspapers should be held liable is: "Moreover, in the absence of an indictment and a pending criminal trial, individuals whose wiretapped conversations are disclosed have no judicial forum in which they may potentially vindicate themselves or their conduct. . . . " Such is the case at bar. Once tarred and feathered by the media, quoting from inaccurate transcripts of illegal wiretaps, respondents Johnson and Keller can only languish in their communities that have been inundated with newspaper type. There is no overcoming the harm, other than redress through our courts.

CONCLUSION

This is not a case of saving the nation's news media from censorship. This is a case of protecting citizens in the privacy of their homes from eavesdroppers and profit minded media. As stated earlier, the newspapers could have printed a legitimate news story without printing the contents of these tapes. The contents are all that Louisiana's law seeks to keep confidential. The newspapers, indeed, seek to establish their status as the Fourth Estate. Although they see no problem with our law telling judges that these contents cannot be used in any proceedings of whatever nature, they set themselves up as higher authorities and claim that, while the law may control what Courts hear, it cannot control what the media prints. No right contained in the U.S. Constitution is absolute

and without exception. The right to privacy is not without exception, but neither should be the right to freedom of the press. At some juncture, these powerful syndicates must be held at bay for the protection of the citizenry of this nation. To allow the newspapers to decide what is of "great public concern", on their own, and to allow them to vilify and scandalize people who, in the privacy of their homes spoke on telephones, will lead to chaos beyond imagination. Their power to spread information, accurate or otherwise, is immense, for their newsprint reaches far beyond the boundaries of normal gossip circles. Once it has been loosed, an individual cannot, without the help of the courts and public judicial procedure, right the wrongs that have been visited upon him. Louisiana's Electronic Surveillance law is narrowly drawn to effectively prevent his harm, and it is respectively submitted that this velvet muzzle should not be removed from what, in some instances, can be an irresponsible and mean press, motivated, not by a sense of public duty, but by a sense of desire for corporate and/or personal profit.

Respectfully submitted,

MICHAEL J. JOHNSON
Appearing-In-Proper-Person
and as Attorney-For-Respondent
McKINLEY KELLER
7169 Hwy. 115, Bunkie, LA 71322
(318) 346-3420, La. Bar Roll #07318

APPENDIX

NO. 98-844

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

McKINLEY KELLER DEC 23 1998

Plaintiff-Appellant

VERSUS

CAROL AYMOND, JR.,
ET AL.

Defendants-Appellees

CONSOLIDATED WITH

NO. 98-843

MICHAEL J. JOHNSON

Plaintiff-Appellant

VERSUS

CAROL AYMOND, JR.,
ET AL.

Defendants-Appellees

On appeal from the Twelfth Judicial District Court [Nos. 97-3663-B and 96-3590-B], Parish of Avoyelles, State of Louisiana; the Honorable William Bennett, District Judge, presiding.

BEFORE: THIBODEAUX, DECUIR, and GREMILLION, Judges.

THIBODEAUX, Judge,

The plaintiffs in these consolidated cases, Michael J. Johnson and McKinley Keller, sued, among others, the Avoyelles Publishing Company and its publisher, Randy DeCuir, for publishing the contents of their private telephone conversations allegedly intercepted in violation of the Louisiana Electronic Surveillance Act, La.R.S. 15:1301 et seq. The trial court, finding a lack of criminal willfulness on the part of the newspaper, granted summary judgment to the defendants, and the plaintiffs filed this appeal. Following our *de novo* review of the record, we reverse the summary judgment granted below due to issues of fact and law.

I.

ISSUES

We must consider:

1) whether the trial court erred in granting summary judgment to DeCuir and Avoyelles Publishing Company due to issues of fact or law regarding the defendants' violation of the Electronic Surveillance Act, R.S. 15:1301 et sequitur;

2) whether a criminal violation of La.R.S. 15:1303 is a prerequisite to a civil action under R.S. 15:1312; and,

3) whether the Electronic Surveillance Act, La.R.S. 15:1301 et seq. violates the constitutional rights of the defendant newspapers.

II.

FACTS

These consolidated lawsuits arise in part from the alleged illegal interception and taping of various private telephone conversations between the plaintiffs, Michael J. Johnson and McKinley Keller, and others. Mr. Johnson and Mr. Keller sued the defendant, Carol Aymond, Jr., alleging that he illegally intercepted and taped their conversations, that is, without the consent of any party involved, in violation of the Electronic Surveillance Act (hereinafter "the Act") at La.R.S. 15:1301, et sequitur. Mr. Aymond then allegedly called a press conference, played the tapes, and distributed copies of the transcripts of the taped conversations to those in attendance, including various newspapers and their associated reporters. The trial court has previously held that Mr. Aymond's actions constituted a "disclosure" under the Act.

The newspapers then allegedly printed excerpts from the contents of the intercepted communications of Mr. Johnson and Mr. Keller. Accordingly, the plaintiffs sued the newspapers, including the defendants herein, the Avoyelles Publishing Company and the publisher and editor/correspondent of the *Avoyelles Journal* (hereafter collectively referred to as "Avoyelles Publishing"), for publishing the contents of illegally intercepted communications, which is specifically prohibited under the Act at La.R.S. 15:1307. The plaintiffs also allege the newspaper's violation of the Act through "disclosure" and "use" of the intercepted information.

The district court previously granted an Exception of No Cause of Action filed by another defendant, Central

Newspapers, which we reversed. *Johnson v. Aymond*, 97-1466 (La.App. 3 Cir. 4/1/98); 709 So.2d 1072, *writ denied*, 98-1181 (La. 6/19/98); ___ So.2d ___. The district court then granted a partial summary judgment in favor of Avoyelles Publishing, which we now reverse. The record does not contain a transcript of the summary judgment hearing or written reasons by the trail court explaining its granting of summary judgment in favor of Avoyelles Publishing. However, the record indicates that the trail judge followed the same reasoning articulated in its prior judgment in favor of Central Newspapers, and those written reasons are included in the record. Accordingly, it is not necessary in this case to read the hearing transcript, and we find sufficient information in the record to aid us in our decision in this case.

III.

LAW AND DISCUSSION

Standard of Review

Appellate courts review summary judgments *de novo*, under the same criteria that govern the district court's consideration of the appropriateness of summary judgment. *See Schroeder v. Board of Supervisors*, 591 So.2d 342 (La.1991); *Benoit v. Roche*, 94-715 (La.App. 3 Cir. 6/14/95); 657 So.2d 574. A motion for summary judgment is properly granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La.Code Civ.P. art. 966.

Assignments of Error

Michael Johnson and McKinley Keller contend that the trail court erred in granting partial summary judgment to the defendants, Randy DeCuir and the Avoyelles Publishing Company, due to the existence of material issues of fact and as a matter of law. The plaintiffs further ask whether the court erred in ruling that there must be criminal willfulness by the defendant in violating R.S. 15: 1303 before a civil remedy can be sought under R.S. 15:1312, and whether the court erred in holding that the Act was a violation of the defendant newspaper's First Amendment (free speech/free press) rights.

Constitutionality of La.R.S. 15:1301 et seq.
Privacy Versus Access

As to the First Amendment violations in reversing the Exception of No Cause of Action of Central Newspapers, in *Johnson v. Aymond*, 709 So.2d 1072, we held that the lower court erred in considering the constitutionality of these statutes because the issue was not properly pled and because the Attorney General was not notified of the constitutionality proceeding pursuant to La.R.S. 13:4448.

In declining its jurisdiction to hear the issue, the Louisiana Supreme Court held that the trial court never specifically rendered the Electronic Surveillance Act unconstitutional but stated that "the merits of the case and/or evidence presented at trial will decide the issue of constitutionality of La.R.S. 15:1301, et seq." *See Keller v. Aymond*, 97-2203, 2204 (La. 11/19/97); 702 So.2d 1387. Notwithstanding, the Louisiana Supreme Court subsequently declined jurisdiction on the constitutionality

issue again and transferred the appeal to this court in *Keller v. Aymond*, 98-0552, 98-0553 (La. 4/23/98); 717 So.2d 1151. Moreover, there is evidence in this record that an "exception based upon unconstitutionality" was filed by the defendant, Aymond, in a prior related proceeding. While the lower court did not declare the entire statute unconstitutional so as to require the Attorney General's involvement, the trial court has twice held that once the illegally intercepted conversation was disclosed by Aymond, any restrictions upon the newspaper from reporting this disclosure would be a violation of the constitutional right of freedom of the press. Accordingly, we will now decide the constitutional issue which has been raised again by both plaintiffs and defendants in their briefs to this court.

The Electronic Surveillance Act, La.R.S. 15:1301 et sequitur, provides generally that it is unlawful to intercept, disclose, or use wire or oral communications unless authorized to do so under color of law and with the consent of at least one of the parties to the communication. Title 15 contains three sections which are pertinent to this case: section 1303, which provides specific remedies in the form of criminal fines and imprisonment for the "willful" interception, disclosure and use of the communication; section 1307, which does not specify a remedy, but prohibits publication and court use of the information; and section 1312, which provides specific civil remedies in the form of monetary damages, including attorney fees and punitive damages, against any person who intercepts, discloses or uses such information.

No Louisiana jurisprudence has interpreted the substance of the Louisiana Act. However, Louisiana's Electronic Surveillance Act was fashioned after its federal counterpart. 18 U.S.C. 2510 et sequitur, known as Title III's Onmibus Crime Control and Safe Streets Act, and federal law is instructive in the areas where the provisional language coincides.

In the present case, two important constitutional rights conflict. The First Amendment to the United States Constitution and Article 1, Section 7 of the Louisiana Constitution protect the public's right of access to information of legitimate public interest and to a free press. The Fourth Amendment to the United States Constitution and Article I, Section 5 of the Louisiana Constitution protect an individual's right to conversational privacy. *See Katz v. United States*, 389 U.S. 347 (1967). However, neither right is absolute; each is qualified. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (first amendment); *Berger v. New York*, 388 U.S. 41 (1967) (fourth amendment). What is required in this case is a careful balancing of the public's interest in access and of freedom of the press against the individual's privacy interests.

We find the case of *Certain Interested Individuals, John Does I-V, Who Are Employees of McDonnell Douglas Corporation v. The Pulitzer Publishing Company*, 895 F.2d 460 (U.S. 8th Cir. (Mo.) 1990), *cert. denied*, 498 U.S. 880 (1990), most compelling and instructive in deciding this constitutionality issue of first instance in Louisiana. In *Pulitzer Publishing*, the newspaper sought access to FBI affidavits which were attached to applications for search warrants issued in a federal investigation. The FBI's affidavit was based in large part upon telephone conversations that

had been intercepted pursuant to court-ordered wiretaps. The individuals under investigation argued that their privacy rights outweighed the public's interest in access to the information and that Title III, 18 U.S. 2510 et seq. protected the materials from disclosure because the materials contain intercepted communications.

The federal statute authorizes wiretaps by law enforcement officers and 18 U.S.C. 2517(2) authorizes the limited use of the contents in search warrants in order to establish probable cause to search. Other sections of the federal statute provide that properly obtained wiretap information must be sealed but can subsequently be disclosed through testimony under oath. In finding against the newspaper, the court made it clear that the statute authorized disclosure only between agents in the performance of their duties and **while giving testimony**. The court in *Pulitzer Publishing* upheld the privacy rights of the intercepted individuals, and its reasoning, as follows, is particularly pertinent under the facts of this case:

> Nonetheless, disclosure to a limited audience of "professionally interested strangers" in the context of their official duties is not the equivalent to disclosure to the public. Title III does not allow public disclosure of all lawfully obtained wiretap evidence just because a few officers are privy to its contents; if this were construed to do so, much of the statute would be superfluous. . . . We do not agree that once wiretap information is used in search warrant affidavits, it is no longer subject to Title III's restrictions upon its use and disclosure. We do not think that Title III's restrictions can be so easily avoided. The use and disclosure of wiretap

> information in search warrant affidavits pursuant to 18 U.S.C. 2517(2) cannot transform the wiretap information into non-wiretap information unprotected by Title III. Acceptance of this argument would create a very large loophole in Title III.

Pulitzer Publishing, 895 F.2d at 465.

Similarly, in the present case, once the plaintiffs' communications were intercepted and used by Aymond, that initial disclosure did not transform the intercepted communications into non-intercepted communications unprotected by Louisiana's Title 15.

Moreover, the allegedly illegal nature of the interceptions in this case should entitle the plaintiffs to even greater protection than those afforded the investigated individuals in *Pulitzer Publishing*.

In balancing the public's and the newspaper's right of access against the individual's right of conversational privacy, the *Pulitzer Publishing* court stated that the absence of an indictment against the individuals was critical because where no indictments had issued against persons allegedly involved in criminal activity, there was a clear suggestion that the Government could not prove the allegations. The court stated that "The court of public opinion is not the place to seek to prove them." *Id.* at 466. The court further articulated:

> Moreover, in the absence of an indictment and a pending criminal trial, individuals whose wiretapped conversations are disclosed have no judicial forum in which they may potentially vindicate themselves or their conduct. Without an indictment, there can be no trial and, from

> their perspective, no acquittal. Thus, [w]here privacy interests in wiretapped conversations are asserted, the court must consider how disclosure of the information would affect the persons identified and society's interest in disclosure. A number of factors enter into this analysis, including the extent of public knowledge of the material, the accusatorial nature of the material, and the need for public scrutiny of the government operations disclosed in the material. . . .

Id. at 467.

In the present case, the record contains no evidence that government operations were involved or that the wiretap was legally obtained by law enforcement officers during an investigation. The allegation is that the interceptions were *illegally* obtained by private citizens. If covert activity was suspected, a legal wiretap should have been ordered, and even that would have been afforded protection. Hence, there is no legitimate public interest to be served by the newspaper's disclosure of the private conversations of the plaintiffs in this case. The plaintiffs had an expectation of privacy in their personal conversations that is clearly protected by the Fourth Amendment to the United States Constitution and by Article 1, Section 5 of our state constitution. Therefore, there is no question that the Electronic Surveillance Act, La.R.S. 15:1301 et seq, which merely creates a method for enforcing the Fourth Amendment's and Article 1, Section 5's protection of conversational privacy, does not unconstitutionally impinge on any freedom of the press protections.

Neither the public nor the press has a right of access to private conversations between private individuals initiated in the privacy of their respective homes. This is particularly true when intercepted individuals have not been indicted for a crime and yet stand to have their reputations and careers seriously damaged by public opinion. We find that the protections against public disclosure of allegedly *illegal* interceptions in La.R.S. 15:1301 et seq are not only constitutional but are even more important that the protections of legally obtained wiretaps in the federal statute.

Our courts have made it clear that the media does not have unfettered rights of access or rights to publicize the contents of any audio and visual event it so desires without the consent of the parties involved just because the First Amendment and Article 1, Section 7 protect freedom of speech and freedom of the press. In *Zacchini v. Scripps-Howard Broadcasting Company*, 433 U.S. 562 (1977), the United States Supreme Court unequivocally articulated that the First and Fourteenth Amendments of the Constitution did not immunize a television broadcasting company when it broadcasted a performer's entire act without his consent. In balancing rights, the press is subject to the same restrictions which our law imposes on the general public. Indeed, the press "is responsible for abuse of [the] freedom" given to it. La.Const., art. 1. § 7.

In *California First Amendment Coalition v. Calderon*, 97-15493 (U.S. 9th Cir. (Cal.) 7/23/98); 150 F.3d 976, a coalition of press and broadcast journalists challenged the exclusion of witnesses from certain phases of lethal injection executions. There, the prison's Procedure 770 was under attack. It prohibited the public viewing of officials

escorting an inmate to the chamber, strapping him to the gurney, and inserting the IV tubes, but allowed observation beginning at the time the lethal drug was running through the IV. Procedure 770 minimized the exposure of the members of the execution team to the media or other witnesses out of concern for staff safety and institutional security. In upholding prison Procedure 770, the court articulated that the First Amendment does not protect the right of the press to gather news not available to the public.

The court's reasoning in *Calderon* is particularly germane to this case. In *Calderon*, the court stated that the right of the press to gather news and information is protected by the First Amendment in order to prevent freedom of the press from being eviscerated. However, the court made it clear that, "[a]lthough substantial, the protection is not without limits. For example, the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Calderon*, 150 F.3d at 981, *citing Branzburg v. Hayes*, 408 U.S. 665 (1972). The *Calderon* court then cited other Supreme Court cases limiting the press in its access to inmates. In all cases, the courts found that because the challenged policies did not deny the press access to sources of information available to members of the general public, those policies did not violate the First Amendment. The court expressed its agreement that executions are matters of great public importance, and that more information leads to a better informed public. It further articulated its acknowledgement that the role of the media is important and that, acting as the eyes and ears of the public, it can be a powerful and constructive

force, contributing to remedial action in the conduct of public business.

However, the court poignantly observed that "the First Amendment does not protect the right of the press to gather news not available to the public" and that holding is "not predicated upon the importance or degree of interest in the matter reported." Succinctly stated, the press has no First Amendment right of access greater than that of the public. *Id.* at 982. Similarly, in the present cases, the public at large has no right of access to private telephone conversations between individual citizens, and the Louisiana Electronic Surveillance Act further prohibits such access through interception, use and disclosure. Accordingly, these prohibitions are constitutional and are extended to the press. The press cannot escape the prohibitions of the Louisiana Electronic Surveillance Act under the guise of constitutional protection. We find that La.R.S. 15:1301 et seq should be stringently enforced and construed against the violator of any of its sections pursuant to a literal interpretation of the statute as set forth more fully below.

Criminality Is Not Required Under All Sections of The Louisiana Act

The trial court determined that, because an Assistant Attorney General stated in a prior proceeding that he "felt there was no way" to find criminal behavior on the part of the newspapers in printing the contents of the audiotapes, there could also be no civil remedy against Avoyelles Publishing. We disagree. We find that the statutes address criminal *and* civil violators and provide for

criminal *and* civil penalties. We further find that the illegal interceptor is a criminal violator *and* is also subject to civil penalties, while the secondary user of the information may be liable criminally and civilly *or* only civilly depending upon the circumstances surrounding his use of the information. Accordingly, we find that the trial court erred in holding that criminal willfulness must exist on the part of the defendant newspaper before the plaintiffs can claim a civil remedy under La.R.S. 15:1312. Hence, the newspaper can be held civilly liable for publishing the contents of the taped conversation, even if it was not charged in a criminal proceeding or even if the elements of criminal willfulness are lacking.

As stated Louisiana's Electronic Surveillance Act was fashioned after its federal counterpart, 18 U.S.C. 2510 et sequitur. However, it is important to note that Louisiana did not adopt many of the provisions of the federal act, and the language varies significantly between the two acts, as do the penalties mandated by each. Therefore, while the defendant newspaper seeks to analogize federal cases interpreting the federal act, we must compare the pertinent language in the applicable provisions before taking instruction from federal cases.

La.R.S. 15:1303 And Federal Statute 18 U.S.C. 2511

Generally, La.R.S. 15:1303 provides that it is unlawful to willfully intercept a wire or oral communication without color of law and the consent of one of the parties to the communication: and it is illegal to willfully disclose or use the contents of the communication if there is reason to know that it was illegally obtained. Section 1303

does provide for criminal penalties up to $10,000 and imprisonment between two and ten years at hard labor. More specifically, section 1303 provides in pertinent part:

> Section 1303. Interception and disclosure of wire, electronic, or oral communications:
>
> A. Except as otherwise specifically provided in this Chapter, it shall be unlawful for any person to:
>
> (1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire or oral communication;
>
> (2) Willfully use, endeavor to use, or procure any other person to use or endeavor to use, any electronic, mechanical, or other device to intercept any oral communication . . .
>
> (3) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of ***this Subsection***; or
>
> (4) Willfully use, or endeavor to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of ***this Subsection***.
>
> B. Any person who violates the provisions of ***this Section*** shall be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard

> labor, without benefit of probation, parole, or suspension of sentence. (Emphasis added)

Therefore, section 1303 of Louisiana's Electronic Surveillance Act does provide for criminal penalties and imprisonment, but only for violations under "***this Section***," that is section 1303. The District Attorney's Office has not filed criminal charges in this matter. It is clear from the record that the trial court based its dismissals of the civil suits against Central Newspapers, Inc., and of Avoyelles Publishing on its finding of a lack of criminal intent. More specifically, in the trial court's "Reasons for Ruling" wherein it granted the Exception of No Cause of Action filed by Central Newspapers, the court referenced a prior proceeding, "In Re: A Matter Under Investigation." There, the trial court took cognizance of statements made by a Louisiana Assistant Attorney General indicating that he "felt there was no way" that the State of Louisiana could establish criminal intent on the part of any of the newspapers.

Again, in its Judgment denying the State's Motion to Compel and the Bunkie newspaper's Motion to Quash, the trial court articulated that the "*publication* of information disclosed at the press conferences" was "not a disclosure as described in Louisiana Revised Statute 15:1303(A)(3)." Hence, it is clear from the court's two prior judgments that it found no criminal disclosure by the newspapers, and used that as a basis for dismissing civil liability claims against them. However, the trial court erred in interpreting the law when it found that *all* sections of the Act required criminal intent.

Since no Louisiana jurisprudence interprets the Louisiana Act, the defendants cite only federal cases interpreting 18 U.S.C. 2510 et seq. More particularly, the federal counterpart of La.R.S. 15:1303 above is 18 U.S.C. 2511, which prohibits the "intentional" interception, disclosure and use of private conversations except by law enforcement officers pursuant to court orders.[1]

The federal statute, 18 U.S.C. 2511, provides for civil fines of $500 in some instances *or* imprisonment of up to five years, or both; while the Louisiana statute provides for a fine up to $10,000 ***and*** imprisonment of not less than two years and up to ten years. Moreover, the federal statute provides for various levels of offenses, while the Louisiana statute does not. The Louisiana statute carries more stringent penalties and is broader, as more fully explained below. As stated, we find that the Louisiana statute, while it may follow some provisions of the federal statute, is not an adoption of the federal statute. Federal jurisprudence is not controlling but is instructive in certain limited circumstances.

In our previous decision, without determining specifically whether a criminal violation was required, we reversed the Exception of No Cause of Action granted to Central Newspapers, finding that the plaintiffs had stated a cause of action "under the literal language of the Electronic Surveillance Act." *Johnson v. Aymond*, 709 So.2d at

---

[1] The federal statute, section 2511, uses the word "intentionally" rather than "willfully," as seen in Louisiana section 1303, due to the United States Congressional amendment to 2511 in 1986, substituting the word "intentionally" wherever the word "willfuly" had been used.

1075. At the present time, in reversing the summary judgment granted to Avoyelles Publishing, we specifically hold for the following reasons that criminal intent is not a requirement under all sections of the Louisiana Electronic Surveillance Act and that, as a matter of law, the defendants may be held liable under the Act. More specifically, neither La.R.S. 15:1312 nor La.R.S. 15:1307 requires criminal intent or provides for criminal penalties or imprisonment. Further, section 1307 specifies that "broadcasting" and "publishing" the contents of intercepted communications is prohibited.

La.R.S. 15:1307 Prohibits Use for Broadcasting and Publishing; Federal Statute, 18 U.S.C. 2515 Does Not

Louisiana Revised Statute 15:1307 provides that the contents of illegally intercepted communications cannot be used as evidence in a court or legislative proceeding and cannot be broadcasted or published. This section, however, does not provide for a specific remedy when the section is violated. Section 1307 provides in pertinent part:

> 1307. Prohibition of use as evidence or intercepted wire or oral communications
>
> A. Whenever any wire or oral communication has been intercepted, **no part of the contents of such communication** and no evidence derived therefrom **may be received in evidence** in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, **if the disclosure of that**

information would be in violation of this Chapter.

B. **No person may broadcast, publish,** disseminate, or otherwise distribute **any part of the content of an electronic communication intercepted in violation of the provisions of this Chapter** unless such dissemination or distribution is made to an investigator or law enforcement officer conducting an investigation into a violation of the provisions of this Section.

The words "willful" and "intentional" do not appear in section 1307. Hence, there are no criminal elements necessary for a violation of the Act under section 1307, which prohibits the uses of illegally intercepted conversations in court or legislative proceedings and in a broadcasts or publications. The federal statute on the other hand, 18 U.S.C. 2515, does not contain subsection B's prohibition against broadcasting or publishing the contents of an intercepted conversation. The federal counterpart provides only:

18 U.S.C. 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom any be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

The federal statute's omission and Louisiana's inclusion of a specific prohibition against broadcasting and publishing illegally intercepted information indicates that the Louisiana legislators anticipated a separate and distinct use of intercepted information not contemplated by the federal statute.

The courts have indicated that these *second* "uses" or illegally obtained information are prohibited to all, lest the intended protection of our privacy rights have no effect and the statutory proscription of such disclosures are rendered impotent for their intended purpose. In *Gelbard v. United States*, 408 U.S. 41 (1972), the United States Supreme Court exhaustively reviewed the legislative history of the federal counterpart of Louisiana's section 1307 and concluded that "the protection of privacy was an overriding congressional concern" when it enacted the federal statute, and that 18 U.S.C. 2515's "importance as a protection for 'the victim of an unlawful invasion of privacy' could not be more clear." *Gelbard*, 408 U.S. at 50.

The *Gelbard* Court reversed contempt findings against witnesses who refused to testify in court to the contents of intercepted conversations. The Court recognized that an invasion of privacy does not end when an interception occurs, but is compounded by disclosures in court or elsewhere. The Court reasoned that the testimony of witnesses compounds the statutorily proscribed invasion of privacy by adding to the injury of the interception the insult of disclosure. Similarly, in the present case, the impact of this second invasion of privacy by Avoyelles Publishing is not lessened by the circumstances that the disclosing party is merely the recipient of a

communication illegally intercepted by an allegedly guilty interceptor.

The *Gelbard* Court made it clear that Title III makes illegal not only unauthorized interceptions but also the disclosure and use of information obtained through such interceptions. Otherwise, the witness becomes the victim, once again, of a federal crime. *Gelbard* went on to articulate that even the prosecutor who pursues unchecked a course of conduct involving the use of intercepted communications can subject himself to "heavy civil and criminal penalties." *Id.* at 52. In Louisiana, prosecutors, attorneys, courts, newspapers, and entities "disclosing" and "using" illegally intercepted information under La.R.S. 15:1303 are all subject to criminal penalties and imprisonment if they disclose or use the information knowing or having reason to know that it was illegally obtained. However, we also find that these "second users" can be liable for civil penalties under section 1312 without the imprisonment mandated in section 1303. Again, Louisiana's inclusion of a particular violation for broadcasting and publishing this information in a section that does not mandate imprisonment or use the terminology associated with criminal intent, distinguishes the Louisiana statutes from the federal statutes and cases interpreting them.

A literal reading of the statute is mandated by La.Civ.Code art. 9, which instructs that when the law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. We find that the Louisiana

statute is clear and unambiguous, and susceptible of a literal interpretation.

Both plaintiffs have alleged use and publication by the defendant of intercepted communications and have submitted affidavits that they never gave authority or consent for any communication between them to be intercepted, taped, disseminated or published, or used in any way. The defendants, however, have not submitted any rebuttal evidence and in fact have not denied that the contents of the communications were published; instead, publication is impliedly conceded. On the face of section 1307, and under a literal interpretation of that section, the plaintiffs need do no more than prove publication in order to prevail at trial against the defendant newspapers for a violation of section 1307B.

While summary judgments are now favored to secure a just and speedy determination of actions, pursuant to the 1996 amendment to La.Code. Civ.P. art, 966, the burden of proof has not changed. The initial burden is still on the mover, who must show that there is no genuine issue as to material fact ***and*** that the mover is entitled to summary judgment as a matter of law. Only after the mover has met its initial burden of production must the opposition submit evidence showing the existence of specific facts establishing a genuine issue of material fact effectively shifting the burden of production to the non-moving party. *Pellerin v. Thibodeaux,* 98-181 (La.App. 3 Cir. 6/17/98); 716 So.2d 131. We find that Avoyelles Publishing has not met its initial burden and is not entitled to summary judgment.

La.R.S. 15:1312 Provides for Civil Damages Without Criminal Willfulness; Federal Statute, 18 U.S.C. 2520, Requires Intent

Louisiana Revised Statutes 15:1312 provides no criteria for criminal "willfulness" but only provides for recovery of civil damages, including attorney fees and punitive damages, to persons whose communications have been intercepted without consent of either party. More specifically, Louisiana's section 1312 provides in pertinent part:

> 1312. Recovery of civil damages authorized
>
> A. Any person whose wire or oral communication is intercepted, disclosed or ***used*** in violation of this Chapter **shall have a civil cause of action against any person who** intercepts, **discloses, or uses,** or procures any other person to intercept, disclose, or use **such communications,** and be entitled to recover from **any such person**:
>
> (1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or one thousand dollars, whichever is greater.
>
> (2) A reasonable attorney's fee and other litigation costs reasonably incurred.
>
> (3) Punitive damages.
>
> B. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this Chapter.

The defendants cite *Malouche v. JH Management Co., Inc.*, 839 F.2d 1024 (4th Cir. 1988), which held that civil liability for unlawful wiretapping under the federal counterpart to Louisiana section 1312, which is 18 U.S.C. 2520,

required proof of criminal willfulness. *Malouche* found that the plaintiff had only "very slight" evidence supporting the factual allegations that his office phone was tapped by the defendant, no evidence as to who installed the device or why, and no evidence that the defendant had knowledge or criminal willfulness under pre-1986 federal statute 18 U.S.C. 2511. In the present case, the alleged interceptor called a press conference, played the tapes, and handed out hard-copy transcriptions of the tapes. Hence, *Malouche* is distinguishable where it involved only the alleged criminal interceptor, and did not involve the mere "user" of the previously intercepted information.

Moreover, neither *Malouche* nor 18 U.S.C. 2520 is controlling in this case, where the language of the federal statute, section 2520, is different from the language of the Louisiana statute. More specifically, the federal statute provides in pertinent part:

> 18. U.S.C. 2520. Recovery of civil damages authorized
>
> (a) In general. – Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, ***or intentionally used*** in violation of this chapter **may in a civil action recover from the person or entity which engaged in that violation** such relief as may be appropriate. . . .

while the Louisiana statute, as previously indicated, provides

1312. Recovery of civil damages authorized

> A. Any person whose wire or oral communication is intercepted, disclosed, **or *used*** in violation of this Chapter **shall have a civil cause of action against any person who** intercepts, **discloses, or uses,** or procures any other person to intercept, disclose, or use **such communications,** and be entitled to recover from **any such person** . . .

Hence, while the federal statute requires an "intentional use," the Louisiana statute does not include the word "intentional" or "willful" in any part of section 1312 providing for civil remedy, but only requires "use." Moreover, federal section 2520 provides that the intercepted party ***may*** obtain a civil recovery from **"the person" who engaged** in the violation indicating that a civil recovery may be available against the same party who unlawfully intercepted the conversation. As stated, the federal statute does not contain a separately proscribed violation for "publishing" contents illegally obtained by another, while in Louisiana, the publisher and the interceptor can clearly be different parties. This is supported by the language in Louisiana's section 1312 providing that the aggrieved party ***shall have*** a civil remedy ***against "any" person*** who intercepts ***or*** discloses ***or*** uses, the communication, not just *"the" person* who engaged in the interception.

There exists no Louisiana jurisprudence defining "disclosure" and "use" of the contents of intercepted information under section 1312. Webster's Ninth New Collegiate Dictionary defines disclosure as "exposure," "the act of disclosing;" and defines "disclose" as "to expose to view," "to make known or public." There is no

requirement in sections 1303, 1307, or 1312 that the disclosure or use of the contents of the illegally obtained communication must be a first or initial disclosure. In this court's view, there is no tenable argument that would convince this court that a newspaper publication does not make information "known or public." any argument that attempts to show that a newspaper publication does not disclose or expose information to view is not grounded in logic.

The record indicates that this newspaper defendant disclosed the contents of the subject communications to the public at large, even though its disclosures were secondary to the alleged initial disclosure by Aymond to the press. Likewise, when the newspapers took the information and printed it, they did not merely report allegations made at a recent press conference based upon taped conversations between the plaintiffs; they "used" the contents to sell papers, to solicit advertisements, and for any other uses a paper makes of the information it gathers. Hence, the press's publication of the intercepted information is a "use" and a "disclosure" under sections 1307 and 1312.

Therefore, under a literal interpretation of the Louisiana statute, sections 1307 and 1312, the plaintiffs, Keller and Johnson, may have civil remedies available to them against the newspapers for publishing the contents of their conversation without the necessity of a finding of criminality leading to imprisonment under section 1303. The civil damages under section 1312 are clear and unambiguous, and include actual damages, reasonable attorney fees, and punitive damages. Accordingly, we find that as a matter of law, Avoyelles Publishing is not entitled to

summary judgment under sections 1307 and 1312 where criminal willfulness is not required.

As to the "willful" use and disclosure under section 1303 resulting in criminal penalties and imprisonment, the plaintiffs in their Opposition to the Avoyelles Publishing's Motion for Summary Judgment, attempt to show that the newspaper willfully and intentionally used the information in violation of section 1303. The word willful often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. It may *generally* mean in a criminal statute that the act was done with a bad purpose; without a justifiable excuse; or stubbornly, obstinately, or perversely. However, "willfully" is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act. *See United States v. Murdock*, 290 U.S. 389 (1933).

The plaintiffs have filed into the record an affidavit attesting that one reporter involved thought that the communications handed out at the press conference were illegally intercepted. Such evidence creates an issue of fact as to the knowledge of the newspaper. Even without evidence of certain knowledge, the circumstances themselves create issues of fact wherein it seems that any reporter handed an audiotape and transcript of a private conversation between parties not in attendance would have "reason to know" that the communications were obtained without consent. Accordingly, summary judgment in favor of Avoyelles Publishing under section 1303 is not appropriate.

IV.

CONCLUSION

Accordingly, we reverse the summary judgment granted by the trial court to Avoyelles Publishing, and we find that as a matter of law, criminal willfulness is not a requirement for civil damages under La.R.S. 15:1312 for "secondary" disclosures and publication of previously intercepted communications under La.R.S. 15:1307. We also find that issues of fact exist regarding the newspaper's "willfulness" of conduct, and its "knowledge" or "reason to know" that the information it published was illegally obtained, precluding summary judgment under La.R.S. 15:1303. Finally, we find that La.R.S. 15:1301 et sequitur violates neither the federal nor state constitutional guarantee of freedom of the press.

We remand for further proceedings.

All costs shall be cast against the defendants-appellees.

REVERSED AND REMANDED.

> 1302. Definitions

As used in this Chapter:

(1) "Aggrieved person" means a person who was party to any intercepted wire or oral communication or a person against whom the interception was directed.

(2) "Attorney for a governmental entity" means an attorney on the staff or under the direct supervision of the district attorney authorized by law to prosecute such offenses as are subject of the pen register or trap and trace device.

(3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(4) "Communications common carrier" means any person engaged as a common carrier for hire in communication by wire or radio; however, a person engaged in commercial radio broadcasting which is supervised by the Federal Communications Commission shall not, insofar as such person is so engaged, be deemed a common carrier.

(5) "Contents" when used with respect to any wire, electronic, or oral communication includes any information concerning the substance, purport, or meaning of that communication.

(6) "Court of competent jurisdiction" means state district courts of general criminal jurisdiction and those courts exercising appellate jurisdiction thereof.

(7)(a) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data, or

intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include any of the following:

(i) Any oral communication.

(ii) Any communication made through a tone-only paging device.

(iii) Any communication from a tracking device used to locate a mobile object by emission of a sound signal.

(b) "Electronic communication" specifically includes the radio portion of a cordless, portable, or cellular telephone communication that is transmitted between the cordless, portable, or cellular handset and the base or transmitting tower or unit.

(8) "Electronic communications service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(9) "Electronic communications system" means any wire, radio, electromagnetic, photo-optical, or photo-electronic facilities used for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communication.

(10) "Electronic, mechanical, or other device or means" denotes any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, either:

(i) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business, or

(ii) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(11) "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(12) "Investigative or law enforcement officer" means any commissioned state police officer of the Department of Public Safety and Corrections who, in the normal course of his law enforcement duties, is investigating an offense enumerated in this Chapter, and the district attorney authorized by law to prosecute or participate in the prosecution of such offense.

(13) "Judge" means the senior judge of a judicial district court of the state, any judge of the Orleans Parish Criminal District Court, or a judge designated by a majority vote of the court in writing in advance to consider applications for warrants or orders under this Chapter.

(14) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception

under circumstances justifying such expectation, but such term does not include any electronic communication.

(15) "Pen register" means a device which records and decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but this term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(16) "Person" means any employee or agent of the state or a political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

(17) "Trap and trace device" means a device or electronic means which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted, except that it shall not include a service, device, or electronic means tariffed by the Louisiana Public Service Commission, used by a subscriber of telecommunicational services to receive the telephone numbers for calls placed to the subscriber.

(18) "Wire communication" or "communication by wire" means any aural transfer made in whole or in part through the use of facilities used for the transmission of communications by aid of wire, cable, or other like connection between the points of origin and reception,

including the use of such connection in a switching station, furnished or operated by any person licensed to engage in providing or operating such facilities for the transmission of communications and such term includes any electronic storage of such communication, and such term includes the radio portion of a cordless, portable, or cellular telephone communication that is transmitted between the cordless, portable, or cellular handset and the base or transmitting tower or unit.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1303. Interception and disclosure of wire, electronic, or oral communications

A. Except as otherwise specifically provided in this Chapter, it shall be unlawful for any person to:

(1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire or oral communication;

(2) Willfully use, endeavor to use, or procure any other person to use or endeavor to use, any electronic,

mechanical, or other device to intercept any oral communication when:

(a) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(b) Such device transmits communications by radio or interferes with the transmission of such communication;

(3) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Subsection; or

(4) Willfully use, or endeavor to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Subsection.

B. Any person who violates the provisions of this Section shall be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard labor, without benefit of probation, parole, or suspension of sentence.

C. (1) It shall not be unlawful under this Chapter for an operator of a switchboard, or any officer, employee, or agent of any communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in

any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication; however, such communications common carriers shall not utilize service observing or random monitoring, except for mechanical or service quality control checks.

(2) It shall not be unlawful under this Chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(3) It shall not be unlawful under this Chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception. Such a person acting under color of law is authorized to possess equipment used under such circumstances.

(4) It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the

state or for the purpose of committing any other injurious act.

(5) It shall not be unlawful under this Chapter:

(a) For the ultimate receiver of wire or electronic communication, or an investigative or law enforcement officer to use a pen register or trap and trace device as provided in Part III of this Chapter.

(b) For a provider of electronic communication services to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, or another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(c) To use a device which captures the incoming electronic or other impulses which identify the numbers of an instrument from which a wire communication was transmitted.

(6) A person or entity providing electronic communication services to the public shall not intentionally divulge the contents of any communication while in transmission of that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient except:

(a) As otherwise authorized by federal or state law.

(b) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination.

(c) Any electronic communication inadvertently obtained by the service provider and which appears to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

D. Upon receipt of the information or evidence sought by the interception, the interception shall cease.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN – LA R.S. 15:1304
LSA-R.S. 15:1304

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1304. Manufacture, distribution, or possession of wire or oral communication intercepting devices prohibited

A. Except as otherwise specifically provided in this Chapter, it shall be unlawful for any person willfully to manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having season to know that the design of such device renders it primarily useful for the purpose of surreptitious interception of wire or oral communications.

B. Any person who violates the provisions of this Section shall be fined not more than ten thousand dollars and imprisoned for not less than two years nor more than ten years at hard labor, without benefit of probation, parole, or suspension of sentence.

C. It shall not be unlawful under this Section for:

(1) A communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier's business in the normal course of the communications common carrier's business, or

(2) An officer, agent, or employee of, or a person under contract with the United States or a commissioned state police officer of the Louisiana Department of Public Safety and Corrections specially authorized by the deputy secretary of public safety services in writing to possess or use pursuant to court authorization, in the normal course of the activities of the Department of Public Safety and Corrections, to manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception of wire or oral communications.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

———

LA-ST-ANN - LA R.S. 15:1305
LSA-R.S. 15:1305

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1305. Confiscation of wire or oral communication intercepting devices

Any electronic, mechanical, or other device used, manufactured, assembled, possessed, sold, or advertised in violation of > R.S. 15:1304 may be seized. Upon seizure, it is forfeited to the state and may be disposed of by the state. No device shall be sold at public or private sale. Any competent judge in whose jurisdiction the device was seized or the judge of the trial court may order the device destroyed or may order it transferred without cost to the Department of Public Safety and Corrections.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN – LA R.S. 15:1306
LSA-R.S. 15:1306

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1306. Immunity of witnesses

Whenever in the judgment of the attorney general or a district attorney, the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the state involving any violation of this Chapter or any of the offenses enumerated in > R.S. 15:1308, or any conspiracy to violate this Chapter or any of the offenses enumerated in > R.S. 15:1308, is necessary to the public interest, the attorney general or such district attorney, with the approval of the attorney general, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this Section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-

incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court, except that no witness shall be exempt under this Section from prosecution for perjury or contempt of court committed while giving testimony or producing evidence under compulsion as provided in this Section. Failure to so testify shall be punishable as contempt of court.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN - LA R.S. 15:1307
LSA-R.S. 15:1307

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1307. Prohibition of use as evidence of intercepted wire or oral communications

A. Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision

thereof, if the disclosure of that information would be in violation of this Chapter.

B. No person may broadcast, publish, disseminate, or otherwise distribute any part of the content of an electronic communication intercepted in violation of the provisions of this Chapter unless such dissemination or distribution is made to an investigator or law enforcement officer conducting an investigation into a violation of the provisions of this Section.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN - LA R.S. 15:1308
LSA-R.S. 15:1308

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1308. Authorization for interception of wire or oral communications

A. The attorney general, with the approval of the district attorney in whose district the interception of wire or oral communications shall take place, and the district attorney, with the approval of the attorney general, may authorize an application to a judge in whose district the

interception of wire or oral communications shall take place, and such judge may grant in conformity with > R.S. 15:1310 an order authorizing or approving the interception of wire or oral communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of:

(1) Any violation of the Uniform Controlled Dangerous Substance Act by:

(a) Producing, manufacturing, distributing, or dispensing a controlled dangerous substance; or

(b) Possessing with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance; or

(c) Creating, distributing, or possessing a counterfeit controlled dangerous substance; or

(d) Conspiring to commit any of the above enumerated offenses.

(2) The commission, attempted commission, or conspiracy to commit a crime involving any of the following offenses:

(a) First or second degree murder.

(b) Aggravated kidnapping.

(c) Aggravated arson.

(d) Manufacture and possession of delayed action incendiary device or manufacture and possession of a bomb.

(e) Armed robbery.

(f) Jury tampering.

(g) Solicitation for murder.

(h) Arson with intent to defraud.

(i) Extortion.

(j) Felony violations of the Uniform Controlled Dangerous Substances Law.

(k) Intimidating, impeding, injuring witnesses or injuring officers.

(l) Any felony offense where the offense was or is to be committed against a law enforcement officer as a result of his official capacity or actions.

(m) Money laundering as defined in > R.S. 14:230.

(n) Transactions involving proceeds from drug offenses as defined in > R.S. 40:1049.

B. Failure of the district attorney to obtain approval for the interception of wire or oral communications as set forth in this Section shall constitute cause for the attorney general to institute, prosecute, or intervene in a criminal action or proceeding as authorized by law.

LA-ST-ANN – LA R.S. 15:1309
LSA-R.S. 15:1309

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess. and Reg. Sess. Acts

S> 1309. Authorization for disclosure and use of intercepted wire or oral communications

A. Any investigative or law enforcement officer who, by any means authorized by this Chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and provided that such disclosure of the contents of any wire or oral communication, or evidence derived therefrom, relates directly to the offense for which the order was granted.

B. Any investigative or law enforcement officer who, by any means authorized by this Chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

C. Any person who has received, by any means authorized by this Chapter, any information concerning a

wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this Chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of the state or in any federal or state grand jury proceeding.

D. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this Chapter shall lose its privileged character.

E. When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications, obtains knowledge of communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Subsections A, B and C of this Section.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN - LA R.S. 15:1310
LSA-R.S. 15:1310

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1310. Procedure for interception of wire or oral communications

A. Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge in whose district such interception of wire or oral communication shall take place and shall state the applicant's authority to make such application. Each application shall include the following information:

(1) The identity of the investigative or law enforcement officer making the application and the person authorizing the application.

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(a) Details as to the particular offense that has been, is being, or is about to be committed,

(b) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted,

(c) A particular description of the type of communications sought to be intercepted, and

(d) The identity of the person, if known, committing the offense and whose communications are to be intercepted.

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous, or that such circumstances exist that without immediate action a human life may be endangered.

(4) A statement of the period of time for which the interception is required to be maintained, which shall not exceed thirty days.

(5) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(6) A full and complete statement of the facts concerning previous applications for the past five years, known to the individuals authorizing and making the application, made to any judge for authorization to intercept, or for approval of interception of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

B. (1) If statements of an identified or unidentified informant are relied upon in the application as a basis for establishing that there are reasonable grounds to believe that an offense has been, is being, or is about to be committed, the application shall set forth the factual basis for the affiant's belief that the informant is credible and that the information has been obtained in a reliable manner. The informant shall be presented to the judge and be sworn to afford the judge opportunity to inquire if the statements made in the application are true. The application shall so state that the informant was presented to the judge and sworn for such purpose. This provision shall not affect the privileged character of the identity of an informant. Nothing herein shall be construed to require the identification of a confidential informant.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence.

C. Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the district in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in > R.S. 15:1308.

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(3) There is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense or are leased to, listed in the name of, or commonly used by such person.

(4) There is reason to believe that investigative procedures have been tried and failed or they reasonably appear to be unlikely to succeed if tried or to be dangerous, or that such circumstances exist that without immediate action a human life may be endangered.

(5) The interception of wire or oral communications, as planned, is not reasonably expected to intercept privileged communications.

D. Each order authorizing or approving the interception of any wire or oral communication shall specify:

(1) The identity of the person, if known, whose communications are to be intercepted.

(2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(3) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.

(4) The identity of the agency authorized to intercept the communications, the person applying for the application, and the person authorizing the application.

(5) The period of time during which such interception is authorized.

E. No order entered under this Section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the investigation, and in no event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with Subsection A of this Section and the court's making the findings required by Subsection C of this Section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty successive days or until the described type of communication has been obtained. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Chapter, and must terminate upon completion of the investigation or expiration of the order.

F. (1) The contents of any wire or oral communication intercepted by any means authorized by this Chapter shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this Subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recording shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying

judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of > R.S. 15:1309(A) and (B) for investigations. The presence of the seal provided for by this Subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under > R.S. 15:1309(C).

(2) Applications made and orders granted under this Chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge in whose district the interception of wire or oral communication took place and shall not be destroyed, except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(3) Any violation of the provisions of this Subsection may be punished as contempt of the issuing or denying judge.

(4) Within a reasonable time, but not later than ninety days after the filing of an application for an order of approval, the issuing judge shall cause to be served, on the persons named in the order of the application, and such other parties to intercepted communications as the judge may determine in his discretion to be in the interest of justice, an inventory which shall include notice of:

(a) The fact of the entry of the order or the application;

(b) The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and

(c) The fact that during the period wire or oral communications were or were not intercepted. The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge in whose district the interception of wire or oral communications took place, the serving of the inventory required by this Subsection may be postponed until such time as may be appropriate in the circumstances.

(5) Whenever an order authorizing the interceptions is entered pursuant to this Chapter, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

G. The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court unless each party, not less than thirty days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This thirty-day period may be waived by the judge if he finds that it was

not possible to furnish the party with the above information thirty days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

H. (1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or

(a) The communication was unlawfully intercepted;

(b) The order of authorization or approval under which it was intercepted is insufficient on its face; or

(c) The interception was not made in conformity with the order of authorization or approval.

(2) Such motion shall be made before the trial, hearing, or proceeding, unless there was not opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this Chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portion of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under this Subsection, or the

denial of any application for an order of approval, if the attorney general or district attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

14B

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN – LA R.S. 15:1311
LSA-R.S. 15:1311

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1311. Reports concerning intercepted wire or oral communications

A. Within twenty days after the expiration of an order, or such extension thereof, entered under > RS

15:1310 or the denial of an order approving an interception, the issuing or denying judge shall report to the judicial administrator of the supreme court:

(1) The fact that an order or extension was applied for.

(2) The kind of order or extension applied for.

(3) The fact that the order or extension was granted as applied for, was modified, or was denied.

(4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(5) The offense specified in the order or application, or extension of an order.

(6) The identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application.

(7) The nature of the facilities from which or the place where communications were to be intercepted.

B. In January of each year the district attorneys shall report to the attorney general and in March of each year the attorney general shall report to the judicial administrator of the supreme court the following information:

(1) The information required by Paragraphs (1) through (7) of Subsection A of this Section with respect to each application of an order or extension made during the preceding calendar year.

(2) A general description of the interceptions made under such order or extension, including:

(a) The approximate nature and frequency of incriminating communications intercepted,

(b) The approximate nature and frequency of other communications intercepted,

(c) The approximate number of persons whose communications were intercepted, and

(d) The approximate nature, amount, and cost of the manpower and other resources used in the interceptions.

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made.

(4) The number of trials resulting from such interceptions.

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied.

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

(7) The information required by Paragraphs (2) through (6) of this Subsection with respect to orders or extensions obtained in the preceding calendar year.

C. In April of each year the judicial administrator of the supreme court shall transmit to the legislature a full

and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the judicial administrator. The judicial administrator may issue binding regulations dealing with the content and form of the reports required to be filed by Subsections A and B of this Section.

LA-ST-ANN – LA R.S. 15:1312
LSA-R.S. 15:1312

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART II. INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1312. Recovery of civil damages authorized

A. Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this Chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other

person to intercept, disclose, or use such communication, and be entitled to recover from any such person:

(1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or one thousand dollars, whichever is greater.

(2) A reasonable attorney's fee and other litigation costs reasonably incurred.

(3) Punitive damages.

B. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this Chapter.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN – LA R.S. 15:1313
LSA-R.S. 15:1313

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART III. PEN REGISTERS AND TRAP AND TRACE DEVICES

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1313. Pen registers and trap and trace devices, use prohibited

A. Except as provided in this Section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under > R.S. 15:1315 of this Part.

B. The prohibition of this section does not apply with respect to the use of a pen register or a trap and trace device by a provider of a wire or electronic communication service:

(1) Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service.

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service, or with the consent of the user of that service.

C. Whoever intentionally violates Subsection A of this Section shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN - LA R.S. 15:1314
LSA-R.S. 15:1314

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART III. PEN REGISTERS AND TRAP AND TRACE DEVICES

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1314. Application for an order for a pen register or a trap and trace device

A. An investigative or law enforcement officer may make application for an order or an extension of an order under > R.S. 15:1315 to a court of competent jurisdiction authorizing or approving the installation and use of a pen register or a trap and trace device under this Part, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of this state. For the purposes of > R.S. 15:1313 through 1316 only, "investigative or law enforcement officer" means:

(1) Any commissioned officer of the office of state police.

(2) Any full-time commissioned city police officer of a municipality of this state.

(3) Any sheriff or a deputy sheriff of a parish of this state which has been specifically designated by the sheriff

of that parish as responsible for preparation of applications for installation and use of pen register or trap and trace devices.

B. An application made pursuant to this section shall include:

(1) The identity of the investigative or law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation.

(2) A certification by the applicant attesting that the information sought is relevant to an ongoing felony criminal investigation being conducted by that agency, and includes in that certification a recital of facts or information constituting the reasonable suspicion upon which the application is based.

(3) A certification by the appropriate agency head that he has reviewed the application and approves the use of the pen register or trap and trace device for that investigation.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN - LA R.S. 15:1315
LSA-R.S. 15:1315

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART III. PEN REGISTERS AND TRAP AND TRACE DEVICES

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1315. Issuance of an order for a pen register or a trap and trace device

A. Upon an application made under > R.S. 15:1314, the court may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the investigative or law enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing felony criminal investigation, and that the certification does include reasonable suspicion as required by > R.S. 15:1314.

B. (1) An order issued under this Section shall specify:

(a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached.

(b) The identity, if known, of the person who is the subject of the criminal investigation.

(c) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of trap and trace, the geographic limits of the trap and trace order.

(d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(2) An order issued under this Section shall direct, upon request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under > R.S. 15:1316.

C. (1) An order issued under this Section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed ten days.

(2) Extensions of such an order may be granted, but only upon an application for an order under > R.S. 15:1314 and upon the judicial finding required by Subsection A of this Section. The period of extension shall be for a period not to exceed ten days.

D. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(1) The order be sealed until otherwise ordered by the court, or until one hundred eighty days after the installation's authorized operation concludes, whichever is earlier.

(2) The person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

E. The head of each law enforcement agency possessing or making application for the installation and use of a pen register or trap and trace device shall establish and implement procedures which shall provide for and ensure the following:

(1) Preparation and maintenance of such logs and records which record, after unsealing of the applications and orders, the approval of applications for installation and use of pen register or trap and trace devices and the duration thereof.

(2) That only the law enforcement agency chief officer or specifically authorized representative of the agency chief shall have the authority to authorize the installation and use of pen register or trap and trace devices and only pursuant to court order.

(3) That no pen register or trap and trace device in the possession of the law enforcement agency shall be subject to unauthorized installation or use.

(4) That a designated sworn and commissioned officer of that law enforcement agency executes and transmits no later than March first of each calendar year to the deputy secretary of public safety services of the Department of Public Safety and Corrections, a sworn affidavit

stating that, to the best of the affiant's knowledge, information and belief, all installations and uses of the pen register or trap and trace devices in the custody of that law enforcement agency have been in accordance with the provisions of this Part and further that no pen register or trap and trace device in the custody of that agency has been the subject of an unauthorized or illegal installation or use.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

LA-ST-ANN – LA R.S. 15:1316
LSA-R.S. 15:1316

> WEST'S LOUISIANA STATUTES ANNOTATED
> LOUISIANA REVISED STATUTES
> TITLE 15. CRIMINAL PROCEDURE
> CHAPTER 10. ELECTRONIC SURVEILLANCE
> PART III. PEN REGISTERS AND TRAP AND TRACE DEVICES

Copr. C. West Group 1999. All rights reserved.
Current through all 1998 1st Ex.Sess.
and Reg. Sess. Acts

S> 1316. Assistance in installation and use of a pen register or a trap and trace device

A. Upon the request of an investigative or law enforcement agency authorized to install and use a pen register under this Part, a provider of a wire or electronic

communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in > R.S. 15:1315(B)(2).

B. Upon the request of an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this Part, a provider of a wire or electronic communication service, landlord, custodian, or other person shall, if technically possible, install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in > R.S. 15:1315(B)(2). Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the investigative or law enforcement officer designated in the court order, at reasonable intervals during the regular business hours for the duration of the order.

C. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this

Section shall be compensated for such reasonable expenses incurred in providing such facilities and assistance.

D. No cause of action shall lie in any Louisiana court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Part.

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works